



CMCE Weekly Report (20 April 2018)

This week's highlights include:

- **EMIR Refit:** The revised CMCE letter on EMIR Refit reflecting amendments made by ECON MEPs was circulated to the ECON Committee to raise points on collateral requirement for uncleared trades (COMP 6), the reporting of exchange-traded derivatives (COMP 8), the reporting of intra-group trades and the calculation of NFC's positions against the clearing threshold. The vote in the ECON Committee has been postponed from 23 April to 16 May.
- **Brexit:** In a meeting with Brexit Coordinators of member states, the Commission continued to urge member states to be prepared in the event of a scenario where no deal is reached between the UK and the EU. On Wednesday, the UK Government published draft secondary legislation intended to prepare the UK financial services rulebook for Brexit. The statutory instrument, made under the auspices of the EU Withdrawal Bill, will preserve EU financial services regulation, including binding Level 2 technical standards, into domestic UK law. On Thursday, Chancellor of the Exchequer Philip Hammond made a speech in New York to industry regarding the intention for the UK and US to set up a Regulatory Dialogue in financial services between HM Treasury, Bank of England and FCA in the UK and the US Treasury and SEC.
- **ESAs review:** The last Council Working Party had a discussion on critical benchmarks, where member states called the Commission proposal premature and inappropriate. Member states are divided on the subject of whether ESMA should have powers to direct supervise critical benchmarks.
- **Regulatory capital:** Both the draft report on the Prudential Framework for Investment Firms IFD and the draft report on the Investment Firms Regulation (IFR) were published. There are no mentions of commodity traders specifically in either of Markus Ferber's reports. Members of the CMCE Regulatory Capital WG have been asked by EFET to support them in proposing a number of amendments which were circulated via email to the WG, for comments by COB on Tuesday 24 April.
- **EMIR CCP Supervision:** In the European Parliament, Danuta Hübner's and Gabriel Mato's draft report on amending art.22 of the ECB statute which would give the ECB power to supervise third-country CCPs was published. The rapporteurs suggest the creation of an open-ended and non-exhaustive list of powers for the ECB which are relevant to the conduct of monetary policy in areas including liquidity, settlement, collateral, interoperability and margin requirements.

MiFID II			
CMCE priorities	Status / latest developments	Next steps	CMCE action
AA exemption Position limits Reporting Physical forwards	CMCE members discussed options for possible CMCE action following the ESMA letter to VP Dombrovskis asking for guidance on the entity or group level interpretation of the ancillary activity test. The FCA (P. Willis) has said that the Commission legal service would support an entity level interpretation; however it is not clear what the position of DG FISMA is. It is understood that the Commission has received several questions about the fact that so few commodity firms have become regulated under MiFID II.		The advisory team is reaching out to Euronext and EEX to seek intelligence on the thinking of NCAs on the potential changes to the ancillary activity exemption due to Brexit.

EMIR			
CMCE priorities	Status / latest developments	Next steps	CMCE action
EMIR REFIT	The revised CMCE letter on EMIR Refit reflecting amendments made by ECON MEPs was circulated to the ECON Committee to raise points on collateral requirement for uncleared trades (COMP 6), the reporting of exchange-traded derivatives (COMP 8), the reporting of intra-group trades and the calculation of NFC's positions against the clearing threshold. The vote in the ECON Committee has been postponed from 23 April to 16 May.	16 May - Vote in ECON (tentative) June - Vote in EP Plenary (tentative, subjective to the progress of the negotiating team)	
EMIR implementation	There were no significant developments this week.		

EMIR II.2 – CCP supervision	Related to EMIR CCP Supervision, Danuta Hübner's and Gabriel Mato's draft report on amending art.22 of the ECB statute was published. There are just 4 amendments. Firstly, the rapporteurs would like to stress that Brexit will lead to a situation in which Euroclearing activities that have implications specifically for the conduct of monetary policy should be regulated. Secondly, The co-rapporteurs would also like to create an open-ended and non-exhaustive list of powers for the ECB which are relevant to the conduct of monetary policy in areas including liquidity, settlement, collateral, interoperability and margin requirements. The third amendment is to specify that any conduct of such powers should be in line with TFEU. Last, the rapporteurs state that for the ESCB and perform its tasks, the ECB may make regulations concerning clearing systems for financial instruments within the EU and with third countries, provided that they are in line with EU law.	24 April - Consideration of amendments in the ECON Committee 16-17 May - Vote in the ECON Committee	
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CRR II & Regulatory Capital			
CMCE priorities	Status / latest developments	Next steps	CMCE action
IFR & IFD	The draft report on the IFD and the draft report on the IFR were published. There are no mentions of commodity traders specifically in either of Markus Ferber's reports. Members of the CMCE Regulatory Capital WG have been asked by EFET to support them in proposing a number of amendments. These were circulated via email to the WG, for comments by Tuesday 24 April.	16/17 May – presentation of draft report in ECON 24 May – Deadline for amendments 18/19 June – Consideration of amendments 24 September – Vote in ECON	Members of the CMCE Regulatory Capital Working Group are requested to provide any input on the amendments by Tuesday 24 April COB. A draft letter to the European Commission will be circulated to the Reg. Cap. WG for comments.

Benchmarks			
CMCE priorities	Status / latest developments	Next steps	CMCE action
Commodity benchmarks Critical benchmarks Third country equivalence	There were no significant developments this week.		

ESAs review			
CMCE priorities	Status / latest developments	Next steps	CMCE action
Critical benchmarks Supervision	<p>With respect to progress made in the Council during the last Council Working Party meeting on the ESAs review which took place on 12 April, member states discussed the point on critical benchmarks. Member states consider the Commission proposal on critical benchmarks and ESMA powers to be both premature and inappropriate; BMR has been agreed and entered into application only recently, and lot of concessions were made from the side of member states during that negotiations and a very sensitive balance was found.</p> <p>With respect to supervision, Denmark, Ireland, Belgium, Luxembourg, Poland, Italy and Hungary think that there is no need for EU centralised supervision and authorisation. However, France, the Netherlands, Portugal, Finland and Estonia support direct supervision over administrators of critical benchmarks. Sweden expressed concern about their national critical benchmark. The Commission outlined that ESMA would supervise EURIBOR, EONIA and LIBOR, and would not regulate use of benchmarks, in line with better regulation.</p>	<p>18-19 June - Presentation of draft report in the ECON Committee</p> <p>9 July - Deadline for amendments in the ECON Committee</p> <p>3 September - Consideration of amendments in the ECON Committee</p> <p>24 September – Vote in the ECON Committee</p>	The advisory team will put together a draft list of potential CMCE key messages and arguments to the co-legislators.

	On third countries, there was only a short discussion, France supports ESMA as a single entry point. Luxembourg, the UK and Germany do not want to reopen the issue. The Commission does not recall that during trilogues on BMR, that there was a particularly intense discussion regarding third countries, and commented that member states should be more open minded.		
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Brexit		
Latest developments	Next steps	CMCE action
<p>On Thursday, Chancellor of the Exchequer Philip Hammond made a speech in New York to industry regarding the intention for the UK and US to set up a Regulatory Dialogue in financial services between HM Treasury, Bank of England and FCA in the UK and the US Treasury and SEC.</p> <p>On Wednesday, the UK Government published draft secondary legislation intended to prepare the UK financial services rulebook for Brexit. The statutory instrument, made under the auspices of the EU Withdrawal Bill, will preserve EU financial services regulation, including binding Level 2 technical standards, into domestic UK law. It will also delegate to the Bank of England, the FCA and the PRA the powers to make amendments to preserve EU law that would otherwise not function after Brexit.</p> <p>The draft statutory instrument does the following:</p> <ul style="list-style-type: none"> – Allocates the responsibility for implementation of EU law to the various regulators in the UK (BoE, FCA, PRA). For example, the recognition of non-UK CCPs will be allocated to the Bank of England whereas ESMA has that responsibility now. – Gives powers to HMT to correct “deficiencies” in EU Level 2 legislation for a period of 2 years which will ensure that EU law will be legally applicable in the UK. These will be of a technical nature, for example by replacing “Commission” and “ESMA” with the appropriate counterparts in the UK in order to ensure that existing law continues to be implemented properly. – The third part explains the exercise of powers allocated to each regulator and due process on legislation going forward, such as the veto powers of the HM Treasury, and the scrutiny powers of the Parliament. 	<p>April - Union negotiator to begin negotiations with the UK on the overall understanding on the framework for the future relationship</p> <p>June – European Parliament plenary to adopt resolution on Brexit</p> <p>October – EU target timeline for reaching final deal on withdrawal agreement</p>	

Also on Thursday, during a meeting of the Council ad hoc working party on art.50 (AHWP50) the Commission debriefed member states on the last negotiation round between EU and UK which took place between 16 – 18 April. On preparedness, the Commission emphasised that member states need to be prepared for a scenario where no deal can be struck between the UK and the EU, warning that the road ahead is bumpy.		
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European Parliament INI Report on EU-third country relationships in regulation and supervision		
Latest developments	Next steps	CMCE action
There were no significant developments this week.	23 April - Presentation of draft INI report 2 May - Deadline for Amendments 28 May - Consideration of Amendments in ECON 18-19 June - ECON vote	

CCP RR		
CMCE priorities	Status / latest developments	Next steps
Resolution Tools	There were no significant developments this week. The Bulgarian Presidency has indicated that this will not be on the agenda of the Council before May 2018 at the very earliest.	

SFTR		
CMCE priorities	Status / latest developments	Next steps
Reporting obligations	There were no significant developments this week.	<p>April/May – Adoption of SFTR Level 2 measures</p> <p>Q3/Q4 - Publication in Official Journal</p>